

KERALA STATE ELECTRICITY OMBUDSMAN
THAANATH BUILDING CLUB JUNCTION POOKKATTUPADI ROAD
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REPRESENTATION No: P9/08

Appellant:

Sri AbdulMajeed S/o KuttyHassan, Managing Partner,
Kolikkal Granite Industries, Ariamkulam, Kattippara,
Thamarassery, Kozhikode Dt

Respondent:

Kerala State Electricity Board
Represented by The Assistant Executive Engineer ,
Electrical Subdivision , Thamarassery,
Kozhikkode Dt

ORDER

1. M/s Kolikkal Granite Industries represented by its Managing Partner Sri Abdul Majeed ,Ariamkulam,Kattippara,Thamarassery submitted a Representation on 7th April 2008 against the Order No 115/CGRF/COMPL/2007-08/743/dt 16.2.2008 of Consumer Grievance Redressal Forum KSEB Kozhikode .The Appellant had made the following pleas in the Representation:

- 1. The Ombudsman may set aside the Order dt 16.2.2008 of the CGRF*
- 2. The Ombudsman may set aside the Bills issued by the Board for the short assessment during the period 5/04 to 7/05.*

The Reason for the delay in issuing the orders: It is recorded here that the orders on the Representation could not be issued within 3 months as stipulated in the regulations due to administrative reasons related with the setting up of the office of the Ombudsman at Kochi and the connected works.

The Representation was forwarded to The Assistant Executive Engineer Electrical Sub Division Thamarassery on 23.4.2008 for detailed report. The Assistant Executive

Engineer furnished his report on 31.5.2008 a copy of which was handed over to the Appellant. The undersigned conducted a hearing of the parties at 2PM on 9.7.2008 at Thiruvananthapuram. After the hearing, both the parties were allowed to submit written arguments before 21.7.2008 . The Appellant submitted a written Argument note on 21.7.2008.

2. The Appellant had furnished the following points in the Representation:

1. Kolikkal Granite Industries is a partnership business run by the Managing Partner Sri Abdul Majeed and 3 others . The original unit by name PTA Crusher Works owned by Sri P.T.Abdul Salam was purchased by them in the Beginning of 2004 with all liabilities and assets.
2. The sick unit was re-started in the beginning period of 2004. Being a sick unit the work was very meagre and electricity consumption was less in 2004. This low pace continued from 1/04 to 10/2004. The building was demolished in October 2004 and entire granite works were stopped and there was no work or production from November 04 to June 05. The construction works were over by the end of June 05 and the Appellant submitted an application for shifting the meter on 29.7.2005 to KSEB. There after the meter was shifted and regular work of the crusher unit started.
3. There was no production at all from November 04 to June 05. The work was in a meagre way from 1/04 to 10/04.
4. The Appellant received a Notice dt 5.12.2007 from the respondents stating that there was a short assessment during the period 5/05 to 7/05 and directing to remit an amount of Rs 73458/- on or before 21.12.2007 . The Appellant filed a Representation in the CGRF Kozhikode . The CGRF set aside the said bill but directed to issue a revised bill taking an average consumption of 3926 units Per Month for the period from 5/2004 to 7/2005. The respondent issued a bill cum disconnection notice dated 7.3.2008 directing to remit an amount of Rs 115994/-
5. The Appellant moved the Hon High Court of Kerala with WP(C)10211/08 whereupon the Hon High Court by judgment dt 26.3.2008 stayed the disconnection notice for 3 weeks and directed to file appeal before the Ombudsman within a period of Two weeks and also to remit Rs 50000/- by two installments within 2 weeks.

The Appellant submitted the following grounds for consideration:

- A. In the demand notice for Rs 73458/- the short assessment was for the period from 5/2005 to 7/2005 whereas the CGRF revised the short assessment period as 5/04 to 7/2005.
- B. During the period 1/04 to 10/04 the consumption is properly recorded and no fault is recorded by any officer of the respondent . The production was very low and small . Hence there is no short assessment for the period 5/04 to 7/05
- C. The Section 56(1) of the Electricity Act 2003 means that the average of the preceding six months is to be calculated, not that of the succeeding six months.
- D. There is no dispute regarding the consumption for the previous 3 months where readings are recorded. The respondent failed to give

notice to the Appellant on the meter being faulty and he could not challenge the findings in time.

- E. The demand cum disconnection notice issued is highly illegal and barred by limitation by Section 56(2) of the Electricity Act 2003. This Section as well as Section 18(8) of Supply Code 2005 barred the respondents from recovering any amount after a period of Two years .
- F. The consumer already remitted charges based on the average for the preceding six months and hence as per Section 56(b) the Respondent has no right to cut off the electricity supply.

The Appellant submitted the following points also in support of his pleas during the Hearing and in the Argument Statement:

- a) The Bills remitted by the Appellant from 12/04 to 6/06 are not fixed amounts as claimed by the CGRF
- b) Appellant purchased the Unit in September 2004 and started reconstructing the same .An agreement dated 2.9.04 executed with M/s Mano Builders for completing the work before 2.9.05 was produced for perusal.
- c) The Appellant do not say that the Unit was completely stopped during the period of reconstruction. Most irregular readings were shown even during the periods prior to their taking over.
- d) The meter was not at all faulty but the unit was not functioning in proper force and so the current was not used and the meter showed the actual reading. The meter reader had committed a mistake by stating that the meter is faulty.
- e) Even if the meter was faulty the Rule 19(2) of supply code 2005 mandates that respondent has to change the same within one month.
- f) As per Section 56(2) the claim of the sum is hopelessly barred by the time the notice is issued because the claim is in respect of the dues for a period upto July 2005 and the Notice is dated 5.12.2007.

3. The Respondent KSEB submitted the following points in their Counter Statement and during the Hearing:

- 1. Consumer No 8373 /Thamarassery , an LT IV 3 Phase Industrial Service Connection with Connected Load 55KW stands in the name of Sri P.T.Abdul Salam PTA Crusher Works in the records of the KSEB .
- 2. Appellant did not remit the amount of Rs 50000/- ordered by the Hon: High Court on 26.3.2008 as a precondition for staying the demand issued as per orders of CGRF
- 3. The Respondents have not received any intimation about the repair/reconstruction works in the plant. The Respondents had not received any application on 29.7.2005 as stated in the Representation. But the Appellant had filed an application on 29.7.2006 and remitted Inspection fee on it. Copy of the Receipt dated 29.7.2006 for the Inspection fee is also produced. The site was inspected

and found that the location was not ready .The Appellant remitted the amount for shifting the meter on 20.2.2008 only.

4. During meter reading in the first week of 11/2004 consumption was noted as nil and Power Meter was seen stuck up. Due to shortage of Meters the meter could be changed on 12.7.2005 only.
5. Average consumption at the rate of 1570 units , based upon consumption for the last available 6 months , was taken to prepare regular monthly demand from 11/2004 to 6/2005
6. The Consumer paid the bills without complaints.
7. Consequent to Revenue Audit the assessment from 5/2004 to 7/2005 was revised based upon the average for the 3 months of 8/05,9/05 and 10/05 and a demand for Rs 73458/- was issued .
8. The Appellant moved CGRF against the assessment. The CGRF set aside the above invoice and directed to issue revised invoice based upon the revised average computed. Hence the Invoice for Rs 115994/-
9. The period noted in the notice dt 5.12.2007 as 5/2005 to 7/2005 was due to a clerical error and the actual period in the said notice was 5/2004 to 7/2005.

4. The undersigned carefully examined the documents, evidences and arguments furnished by both the parties and the findings are narrated below:

The electricity consumption recorded in the Energy Meter in the premises of an Industrial Electricity Consumer reasonably reflects the quantum of production unless the correctness of the recordings is disputed by the connected parties. In the instant case the correctness has been questioned only by the respondents and hence the question of Short Assessment arises. On a perusal of the consumption statement for the period from 01/2004 to 03/2006 the following points are evident:

- a. The consumption is more or less steady from 01/2004 to 04/2004 (both included) when the probable seasonal and daily variations in the Granite production is also considered
- b. The consumption is more or less steady from 07/2005 to 03/2006 (both included) when the probable seasonal and daily variations in the Granite production is also considered
- c. From 05/2004 to 11/2004 the recorded consumption exhibits wide variations. The meter is recorded as faulty from 11/2004 to 12.07.2005

The area of contention between the Appellant and Respondent is the assessment applicable for the period from 05/2004 to 07/2005. The actual levels of the Energy Consumption could be reasonably ascertained if the Appellants had furnished actual figures of production in the Unit for the different periods .That could have been one way of ascertaining the correctness of the assessment by the Licensee.

5. The date on which the Appellant purchased the Granite unit is noted as *“the beginning of 2004”* in Para 1 and Para 2 of Page 2 of the Representation .The Para 2 of the Representation also narrates how the unit was renamed and restarted in *“the beginning period of 2004”*.

But in Para 7 of the Argument Note dated 17th July 2008 the Appellant states that *“the appellant purchased the said unit in September 2004. After purchasing the said unit the appellant started reconstructing the same .The agreement dated 2.9.2004 is produced herewith.”*

The contradictions in the statements of the Appellant are evident.

Similarly in Page 3 of the Representation the Appellant states that *“there was no production at all from November 04 to June 05.* But in the Para 8 of the Argument Note dated 17th July 2008 he states that *“the Appellant do not say that the Unit was completely stopped during the period of reconstruction.”*

The period of reconstruction as per the Appellant is *“one year from 9/2004* and an agreement between the Appellant and a Construction company had been submitted for perusal during the hearing.

The statement says that the work was in a meagre way from 1/04 to 10/04 and asserts that the recorded consumption will prove the same. It is observed that the claim that *“the work was in a meagre way from 1/04 to 10/04”* do not concur with the reality reflected in the recorded consumption. The production was normal at least upto 04/2004 as shown by energy consumption figures.

The only conclusion one can arrive from the above is that the Appellant is not revealing the facts related to the actual date of purchase, the actual period during which the unit was sick if at all such a period had been there etc.

Even though the Appellant repeatedly ascertains that the unit was a sick one before he purchased and reconstructed it, he has failed to submit even the *“actual date of buying the unit and the period in which it was not working to full capacity.”*

The erratic consumption figures from 5/2004 to 11/2004 and the subsequent *“stuck-up-recording”* should attract the attention of any observer. If at all the Unit had gone sick it had suddenly happened in 5/04. The consumption figures from the date of changing the meter in 7/05 reflect normal production activity. In the absence of any reasonable and legitimate evidence produced by the Appellant one would be inclined to believe that it was the Meter that became *“sick”* in 5/04.

The Appellant has claimed that he had submitted an application on 29.7.2005 for shifting the meter and paid necessary fees with it. But the copy of the Application produced shows that the application seems to be dated 29.7.2006 and the Inspection Fee Rs 50/- is seen paid on 29.7.2006 with Receipt No 294/452. The Respondents have produced copies of the receipt 288/2248 dated 20.2.2008 and 400/2248 dated 28.2.2008 wherein the Appellant has paid Rs 1003/- and 2008/- towards the costs of work. The Appellant seems to be either mislead and confused or trying to mislead this Authority. If the Appellant had submitted the application for shifting the meter on 29.7.2005 as claimed by him or on 29.7.2006 as shown on the documents submitted,

why he had waited till 28.2.2008 for remitting the Cost of the work remains to be a gray area.

The Appellant could not convincingly and *without contradicting himself* establish any of his contentions on the period in which the Unit was sick, the date or month in which he had bought out the Unit, the period during which it was reconstructed by the Appellant, and the period in which the unit resumed normal working.

These basic premises are crucial for analyzing whether *the quantum as well as the period of short assessments* is reasonable or not.

In the absence of the above the only option left out before the undersigned would be to concur with the logic adopted by the Licensee as well as the CGRF .

6. The average calculated by the CGRF also needs a careful evaluation in the interest of justice. The CGRF has calculated 3926 units as monthly average for the period from 5/07 to 7/05 based upon the consumption for 7/05,8/05 and 8/05 which is found to be reasonable and concur with the subsequent consumption pattern as per the statement of consumption available .

7. The Appellant has stated that the Section 56(1) of The Electricity Act2003 means that the average of the preceding 6months, not that of succeeding 3 months after replacement of the meter is to be considered for calculation .The above Section is reproduced here:

56. (1) *Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:*

Provided that the supply of electricity shall not be cut off if such person deposits , under protest, -

(a) *an amount equal to the sum claimed from him, or*
(b) *the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months, whichever is less, pending disposal of any dispute between him and the licensee.*

(2) *Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity:*

A careful reading of the above clause will show that the above self-calculation-methodology is envisaged for calculating the interim deposit payable by the consumer himself pending disposal of disputes. The Licensee cannot disconnect if the consumer deposits such self calculated amount against a demand made by the Licensee .By no stretch of imagination can this clause be made applicable to assessments by Licensee under situations of short assessment. Hence the view of the Appellant that the average to be reckoned for calculating the short assessed-units shall be that of the preceding 6 months as per this clause is not acceptable.

8. The argument of the Appellant that the Invoice issued by the Respondent is barred by limitation in view of the Section 56(2) of the Act deserves careful examination. The claim shall be barred by limitation after the period of two years from the date when *such sum became first due* as per the clause subject to certain conditions.

Here the most pertinent question is *when does a sum from the consumer become due?* Does the sum become due as soon as the energy is consumed by a Consumer? If yes, how can one show that sum as *'continuously as recoverable as arrear of charges for electricity supplied'*?. It is obvious that the sum could be shown continuously as recoverable as arrear of charges *only if* the amount is computed and demand is raised by the Licensee.

It is also seen that the Section 56(2) speaks about the sum due from any consumer which *he neglects* to pay as explained in Section 56(1) above. The consumer would be able to pay only when a demand is raised by the Licensee and the question of negligence comes up only when a demand note or Invoice is issued to the consumer. The only conclusion one can reach under this situation is that the Section 56(2) is related to the Sum which a licensee has raised as demand and which a consumer neglects to pay . This sum *shall not be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges.*

In other words the Clause 56(2) as well as Clause 56(1) become operative only if the Licensee raises a demand and issues an Invoice to the Consumer. And obviously the Limitation of time commences from Two years from the date of such Invoice or demand subject to the condition mentioned in the last part of the Clause 56(2).

In the instant case the demand for the arrears of Rs 115994/- is seen raised by the KSE board on 7.3.2008 and hence the question of Limitation under Section 56(2) is not relevant here.

9. The Appeal Representation is hereby disposed off with the following orders :

1. After carefully examining all the evidences, arguments and points furnished by the Appellant and Respondent on the matter ,and considering the facts and circumstances of the case, *the plea of the Appellant to set aside the*

Order dt 16.2.2008 of the CGRF Kozhikode and the Bill issued by the Board for the short assessment during the period 5/04 to 7/05 is rejected .

2. No orders on Costs.

Dated this the 5th August 2008

P.PARAMESWARAN
Electricity Ombudsman

No P9/2008/_____ / Dated 05.08.2008

Forwarded to :

- 1 Sri AbdulMajeed S/o KuttyHassan,
Managing Partner,
Kolikkal Granite Industries,
AriamKulam, Kattippara,
Thamarassery, Kozhikode Dt
- 2 The Assistant Executive Engineer ,
Electrical Subdivision , Thamarassery,
Kozhikkode Dt

Copy to :

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- iii. The Chairman
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KOTTARAKKARA
- iv. The Chairman
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